

92D CONGRESS	}	HOUSE OF REPRESENTATIVES	}	REPORT
2d Session				No. 92-1444

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## COMMISSION ON CIVIL RIGHTS

SEPTEMBER 26, 1972.—Ordered to be printed

Mr. CELLER, from the the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 12652]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12652) to extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 1, 2, 3, 4, 5, 6, 7, and 10.

That the House recede from its disagreement to the amendments of the Senate numbered 8 and 9, and agree to the same.

EMANUEL CELLER,  
JACK BROOKS,  
WILLIAM L. HUNGATE,  
WILLIAM M. McCULLOCH,  
EDWARD HUTCHINSON,

*Managers on the Part of the House.*

PHILIP A. HART,  
ROMAN HRUSKA,  
HUGH SCOTT,  
HIRAM L. FONG,

*Managers on the Part of the Senate.*

83-000

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 12652) to extend the life of the Commission on Civil Rights, to expand the jurisdiction of the Commission to include discrimination because of sex, to authorize appropriations for the Commission, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

Amendments numbered 1 through 7: Delete technical renumbering changes proposed by the Senate and appropriate only if amendment numbered 10 had been retained.

Amendment numbered 8: Authorizes Civil Rights Commission appropriation for fiscal year 1973 of \$5,500,000, as proposed by the Senate, instead of \$6,500,000, as proposed by the House.

Amendment numbered 9: Authorizes annual Civil Rights Commission appropriation for fiscal years 1974 through 1978 of \$7,000,000, as proposed by the Senate, instead of \$8,500,000, as proposed by the House.

Amendment numbered 10: Senate recedes.

EMANUEL CELLER,  
JACK BROOKS,  
WILLIAM L. HUNGATE,  
WILLIAM M. McCULLOCH,  
EDWARD HUTCHINSON,

*Managers on the Part of the House.*

PHILIP A. HART,  
ROMAN L. HRUSKA,  
HUGH SCOTT,  
HIRAM L. FONG,

*Managers on the Part of the Senate.*

(2)

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H. Rept. 92-1444

92<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1438

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 9, 1971

Referred to the Committee on Post Office and Civil Service

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## AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       SECTION 1. It shall be unlawful for any officer of any  
4       executive department or any executive agency of the United  
5       States Government, or for any person acting or purporting  
6       to act under his authority, to do any of the following things:

I

1       (a) To require or request, or to attempt to require or  
2       request, any civilian employee of the United States serving  
3       in the department or agency, or any person seeking employ-  
4       ment in the executive branch of the United States Govern-  
5       ment, to disclose his race, religion, or national origin, or  
6       the race, religion, or national origin of any of his fore-  
7       bears: *Provided, however,* That nothing contained in this  
8       subsection shall be construed to prohibit inquiry concerning  
9       the citizenship of any such employee or person if his citizen-  
10      ship is a statutory condition of his obtaining or retaining his  
11      employment: *Provided further,* That nothing contained in  
12      this subsection shall be construed to prohibit inquiry concern-  
13      ing the national origin or citizenship of any such employee or  
14      person or of his forebears, when such inquiry is deemed  
15      necessary or advisable to determine suitability for assignment  
16      to activities or undertakings related to the national security  
17      within the United States or to activities or undertakings of  
18      any nature outside the United States.

19      (b) To state or intimate, or to attempt to state or inti-  
20      mate, to any civilian employee of the United States serving  
21      in the department or agency that any notice will be taken of  
22      his attendance or lack of attendance at any assemblage, dis-  
23      cussion, or lecture held or called by any officer of the execu-  
24      tive branch of the United States Government, or by any per-  
25      son acting or purporting to act under his authority, or by any

1 outside parties or organizations to advise, instruct, or in-  
2 doctrinate any civilian employee of the United States serving  
3 in the department or agency in respect to any matter or  
4 subject other than the performance of official duties to which  
5 he is or may be assigned in the department or agency, or  
6 the development of skills, knowledge, or abilities which  
7 qualify him for the performance of such duties: *Provided*,  
8 *however*, That nothing contained in this subsection shall be  
9 construed to prohibit taking notice of the participation of a  
10 civilian employee in the activities of any professional group  
11 or association.

12 (c) To require or request, or to attempt to require or  
13 request, any civilian employee of the United States serving  
14 in the department or agency to participate in any way in  
15 any activities or undertakings unless such activities or under-  
16 takings are related to the performance of official duties to  
17 which he is or may be assigned in the department or agency,  
18 or to the development of skills, knowledge, or abilities which  
19 qualify him for the performance of such duties.

20 (d) To require or request, or to attempt to require  
21 or request, any civilian employee of the United States serv-  
22 ing in the department or agency to make any report con-  
23 cerning any of his activities or undertakings unless such  
24 activities or undertakings are related to the performance of  
25 official duties to which he is or may be assigned in the

1 department or agency, or to the development of skills, knowl-  
2 edge, or abilities which qualify him for the performance of  
3 such duties, or unless there is reason to believe that the  
4 civilian employee is engaged in outside activities or employ-  
5 ment in conflict with his official duties.

6 (e) To require or request, or to attempt to require or  
7 request, any civilian employee of the United States serving  
8 in the department or agency, or any person applying for  
9 employment as a civilian employee in the executive branch  
10 of the United States Government, to submit to any interroga-  
11 tion or examination or to take any psychological test which  
12 is designed to elicit from him information concerning his  
13 personal relationship with any person connected with him  
14 by blood or marriage, or concerning his religious beliefs or  
15 practices, or concerning his attitude or conduct with respect  
16 to sexual matters: *Provided, however,* That nothing con-  
17 tained in this subsection shall be construed to prevent  
18 a physician from eliciting such information or authorizing  
19 such tests in the diagnosis or treatment of any civilian  
20 employee or applicant where such physician deems such  
21 information necessary to enable him to determine whether  
22 or not such individual is suffering from mental illness: *Pro-*  
23 *vided further, however,* That this determination shall be  
24 made in individual cases and not pursuant to general practice  
25 or regulation governing the examination of employees or

1 applicants according to grade, agency, or duties: *Provided*  
2 *further, however,* That nothing contained in this subsection  
3 shall be construed to prohibit an officer of the department or  
4 agency from advising any civilian employee or applicant of a  
5 specific charge of sexual misconduct made against that per-  
6 son, and according him an opportunity to refute the charge.

7 (f) To require or request, or attempt to require or  
8 request, any civilian employee of the United States serving  
9 in the department or agency, or any person applying for  
10 employment as a civilian employee in the executive branch  
11 of the United States Government, to take any polygraph  
12 test designed to elicit from him information concerning his  
13 personal relationship with any person connected with him  
14 by blood or marriage, or concerning his religious beliefs or  
15 practices, or concerning his attitude or conduct with respect  
16 to sexual matters.

17 (g) To require or request, or to attempt to require  
18 or request, any civilian employee of the United States serving  
19 in the department or agency to support by personal endeavor  
20 or contribution of money or any other thing of value the  
21 nomination or the election of any person or group of persons  
22 to public office in the Government of the United States or of  
23 any State, district, Commonwealth, territory, or possession  
24 of the United States, or to attend any meeting held to pro-  
25 mote or support the activities or undertakings of any political

1 party of the United States or of any State, district, Common-  
2 wealth, territory, or possession of the United States.

3 (h) To coerce or attempt to coerce any civilian  
4 employee of the United States serving in the department or  
5 agency to invest his earnings in bonds or other obligations  
6 or securities issued by the United States or any of its depart-  
7 ments or agencies, or to make donations to any institution  
8 or cause of any kind: *Provided, however,* That nothing con-  
9 tained in this subsection shall be construed to prohibit any  
10 officer of any executive department or any executive agency  
11 of the United States Government, or any person acting or  
12 purporting to act under his authority, from calling meetings  
13 and taking any action appropriate to afford any civilian em-  
14 ployee of the United States the opportunity voluntarily to  
15 invest his earnings in bonds or other obligations or securities  
16 issued by the United States or any of its departments or  
17 agencies, or voluntarily to make donations to any institution  
18 or cause.

19 (i) To require or request, or to attempt to require  
20 or request, any civilian employee of the United States  
21 serving in the department or agency to disclose any items  
22 of his property, income, or other assets, source of income,  
23 or liabilities, or his personal or domestic expenditures or  
24 those of any member of his family or household: *Provided,*  
25 *however,* That this subsection shall not apply to any civilian



1 employee who has authority to make any final determination  
2 with respect to the tax or other liability of any person, cor-  
3 poration, or other legal entity to the United States, or  
4 claims which require expenditure of moneys of the United  
5 States: *Provided further, however,* That nothing contained  
6 in this subsection shall prohibit the Department of the  
7 Treasury or any other executive department or agency of  
8 the United States Government from requiring any civilian  
9 employee of the United States to make such reports as may  
10 be necessary or appropriate for the determination of his  
11 liability for taxes, tariffs, custom duties, or other obliga-  
12 tions imposed by law.

13 (j) To require or request, or to attempt to require  
14 or request, any civilian employee of the United States  
15 embraced within the terms of the proviso in subsection  
16 (i) to disclose any items of his property, income, or  
17 other assets, source of income, or liabilities, or his personal  
18 or domestic expenditures or those of any member of his  
19 family or household other than specific items tending to  
20 indicate a conflict of interest in respect to the perform-  
21 ance of any of the official duties to which he is or may be  
22 assigned.

23 (k) To require or request, or to attempt to require or  
24 request, any civilian employee of the United States serving  
25 in the department or agency, who is under investigation for

1 misconduct, to submit to interrogation which could lead to  
2 disciplinary action without the presence of counsel or other  
3 person of his choice, if he so requests: *Provided, however,*  
4 That a civilian employee of the United States serving in the  
5 Central Intelligence Agency or the National Security Agency  
6 may be accompanied only by a person of his choice who  
7 serves in the agency in which the employee serves, or by  
8 counsel who has been approved by the agency for access to  
9 the information involved.

10 (1) To discharge, discipline, demote, deny promotion  
11 to, relocate, reassign, or otherwise discriminate in regard to  
12 any term or condition of employment of, any civilian em-  
13 ployee of the United States serving in the department or  
14 agency or to threaten to commit any of such acts, by reason  
15 of the refusal or failure of such employee to submit to or  
16 comply with any requirement, request, or action made un-  
17 lawful by this Act, or by reason of the exercise by such  
18 civilian employee of any right granted or secured by this  
19 Act.

20 SEC. 2. It shall be unlawful for any officer of the United  
21 States Civil Service Commission, or for any person acting  
22 or purporting to act under his authority, to do any of the  
23 following things:

24 (a) To require or request, or to attempt to require or  
25 request, any executive department or any executive agency

1 of the United States Government, or any officer or employee  
2 serving in such department or agency, to violate any of the  
3 provisions of section 1 of this Act.

4 (b) To require or request, or to attempt to require or  
5 request, any person seeking to establish civil service status  
6 or eligibility for employment in the executive branch of the  
7 United States Government, or any person applying for em-  
8 ployment in the executive branch of the United States Gov-  
9 ernment, or any civilian employee of the United States  
10 serving in any department or agency of the United States  
11 Government, to submit to any interrogation or examination  
12 or to take any psychological test which is designed to elicit  
13 from him information concerning his personal relationship  
14 with any person connected with him by blood or marriage,  
15 or concerning his religious beliefs or practices, or concerning  
16 his attitude or conduct with respect to sexual matters: *Pro-*  
17 *vided, however,* That nothing contained in this subsection  
18 shall be construed to prevent a physician from eliciting such  
19 information or authorizing such tests in the diagnosis or  
20 treatment of any civilian employee or applicant where such  
21 physician deems such information necessary to enable him  
22 to determine whether or not such individual is suffering  
23 from mental illness: *Provided further, however,* That this  
24 determination shall be made in individual cases and not pur-

1 suant to general practice or regulation governing the exami-  
2 nation of employees or applicants according to grade, agency,  
3 or duties: *Provided further, however,* That nothing contained  
4 in this subsection shall be construed to prohibit an officer of  
5 the Civil Service Commission from advising any civilian  
6 employee or applicant on a specific charge of sexual miscon-  
7 duct made against that person, and affording him an oppor-  
8 tunity to refute the charge.

9 (c) To require or request, or to attempt to require  
10 or request, any person seeking to establish civil service  
11 status or eligibility for employment in the executive branch  
12 of the United States Government, or any person applying  
13 for employment in the executive branch of the United States  
14 Government, or any civilian employee of the United States  
15 serving in any department or agency of the United States  
16 Government, to take any polygraph test designed to elicit  
17 from him information concerning his personal relationship  
18 with any person connected with him by blood or marriage,  
19 or concerning his religious beliefs or practices, or concerning  
20 his attitude or conduct with respect to sexual matters.

21 SEC. 3. It shall be unlawful for any commissioned officer,  
22 as defined in section 101 of title 10, United States Code, or  
23 any member of the Armed Forces acting or purporting to  
24 act under his authority, to require or request, or to attempt  
25 to require or request, any civilian employee of the executive

1 branch of the United States Government under his authority  
2 or subject to his supervision to perform any of the acts or  
3 submit to any of the requirements made unlawful by section  
4 1 of this Act.

5 SEC. 4. Whenever any officer of any executive depart-  
6 ment or any executive agency of the United States Gov-  
7 ernment, or any person acting or purporting to act under his  
8 authority, or any commissioned officer as defined in section  
9 101 of title 10, United States Code, or any member of the  
10 Armed Forces acting or purporting to act under his author-  
11 ity, violates or threatens to violate any of the provisions of  
12 section 1, 2, or 3 of this Act, any civilian employee of the  
13 United States serving in any department or agency of the  
14 United States Government, or any person applying for  
15 employment in the executive branch of the United States  
16 Government, or any person seeking to establish civil service  
17 status or eligibility for employment in the executive branch  
18 of the United States Government, affected or aggrieved by  
19 the violation or threatened violation, may bring a civil action  
20 in his own behalf or in behalf of himself and others  
21 similarly situated, against the offending officer or person in  
22 the United States district court for the district in which the  
23 violation occurs or is threatened, or the district in which the  
24 offending officer or person is found, or in the United States  
25 District Court for the District of Columbia, to prevent

1 the threatened violation or to obtain redress against the  
2 consequences of the violation. The Attorney General shall  
3 defend all officers or persons sued under this section  
4 who acted pursuant to an order, regulation, or directive,  
5 or who, in his opinion, did not willfully violate the  
6 provisions of this Act. Such United States district court  
7 shall have jurisdiction to try and determine such civil action  
8 irrespective of the actuality or amount of pecuniary injury  
9 done or threatened, and without regard to whether the  
10 aggrieved party shall have exhausted any administrative  
11 remedies that may be provided by law, and to issue such  
12 restraining order, interlocutory injunction, permanent injunc-  
13 tion, or mandatory injunction, or enter such other judgment  
14 or decree as may be necessary or appropriate to prevent  
15 the threatened violation, or to afford the plaintiff and others  
16 similarly situated complete relief against the consequences of  
17 the violation. With the written consent of any person  
18 affected or aggrieved by a violation or threatened violation  
19 of section 1, 2, or 3 of this Act, any employee organization  
20 may bring such action on behalf of such person, or may  
21 intervene in such action. For the purposes of this section,  
22 employee organizations shall be construed to include any  
23 brotherhood, council, federation, organization, union, or pro-  
24 fessional association made up in whole or in part of civilian  
25 employees of the United States and which has as one of its

1 purposes dealing with departments, agencies, commissions,  
2 and independent agencies of the United States concerning  
3 the condition and terms of employment of such employees.

4 SEC. 5. (a) There is hereby established a Board on  
5 Employees' Rights (hereinafter referred to as the "Board").  
6 The Board shall be composed of three members, appointed  
7 by the President, by and with the advice and consent of the  
8 Senate. The President shall designate one member as chair-  
9 man. No more than two members of the Board may be of  
10 the same political party. No member of the Board shall be  
11 an officer or employee of the United States Government.

12 (b) The term of office of each member of the Board  
13 shall be five years, except that (1) of those members first  
14 appointed, one shall serve for five years, one for three years,  
15 and one for one year, respectively, from the date of enact-  
16 ment of this Act, and (2) any member appointed to fill  
17 a vacancy occurring prior to the expiration of the term for  
18 which his predecessor was appointed shall be appointed for  
19 the remainder of such term.

20 (c) Members of the Board shall be compensated at the  
21 rate of \$75 a day for each day spent in the work of the  
22 Board, and shall be paid actual travel expenses and per  
23 diem in lieu of subsistence expenses when away from their  
24 usual places of residence, as authorized by section 5703 of  
25 title 5, United States Code.

1 (d) Two members shall constitute a quorum for the  
2 transaction of business.

3 (e) The Board may appoint and fix the compensation  
4 of such officers, attorneys, and employees, and make such  
5 expenditures as may be necessary to carry out its functions.

6 (f) The Board shall make such rules and regulations  
7 as shall be necessary and proper to carry out its functions.

8 (g) The Board shall have the authority and duty to  
9 receive and investigate written complaints from or on be-  
10 half of any person claiming to be affected or aggrieved by  
11 any violation or threatened violation of this Act and to con-  
12 duct a hearing on each such complaint. Within ten days  
13 after the receipt of any such complaint, the Board shall  
14 furnish notice of the time, place, and nature of the hearing  
15 thereon to all interested parties. The Board shall render  
16 its final decision with respect to any complaint within thirty  
17 days after the conclusion of its hearing thereon.

18 (h) Officers or representatives of any Federal employee  
19 organization in any degree concerned with employment of  
20 the category in which any alleged violation of this Act  
21 occurred or is threatened shall be given an opportunity to  
22 participate in each hearing conducted under this section,  
23 through submission of written data, views, or arguments,  
24 and in the discretion of the Board, with opportunity for oral  
25 presentation. Government employees called upon by any



1 party or by any Federal employee organization to participate  
2 in any phase of any administrative or judicial proceeding  
3 under this section shall be free to do so without incurring  
4 travel costs or suffering loss in leave or pay; and all such em-  
5 ployees shall be free from restraint, coercion, interference,  
6 intimidation, or reprisal in or because of their participation.  
7 Any periods of time spent by Government employees during  
8 such participation shall be held and considered to be Federal  
9 employment for all purposes.

10 (i) Insofar as consistent with the purposes of this sec-  
11 tion, the provisions of subchapter II of chapter 5 of title 5,  
12 United States Code, relating to the furnishing of notice and  
13 manner of conducting agency hearings, shall be applicable  
14 to hearings conducted by the Board under this section.

15 (j) If the Board shall determine after hearing that a  
16 violation of this Act has not occurred or is not threatened,  
17 the Board shall state its determination and notify all inter-  
18 ested parties of such determination. Each such determina-  
19 tion shall constitute a final decision of the Board for purposes  
20 of judicial review.

21 (k) If the Board shall determine that any violation of  
22 this Act has been committed or threatened by any civilian  
23 officer or employee of the United States, the Board shall  
24 immediately (1) issue and cause to be served on such of-  
25 ficer or employee an order requiring such officer or employee

1 to cease and desist from the unlawful act or practice which  
2 constitutes a violation, (2) endeavor to eliminate any such  
3 unlawful act or practice by informal methods of conference,  
4 conciliation, and persuasion, and (3) may—

5 (A) (i) in the case of the first offense by any  
6 civilian officer or employee of the United States, other  
7 than any officer appointed by the President, by and with  
8 the advice and consent of the Senate, issue an official  
9 reprimand against such officer or employee or order the  
10 suspension without pay of such officer or employee from  
11 the position or office held by him for a period of not to  
12 exceed fifteen days, and (ii) in the case of a second  
13 or subsequent offense by any such officer or employee,  
14 order the suspension without pay of such officer or em-  
15 ployee from the position or office held by him for a  
16 period of not to exceed thirty days or order the removal  
17 of such officer or employee from such position or office;  
18 and

19 (B) in the case of any offense by any officer ap-  
20 pointed by the President, by and with the advice and  
21 consent of the Senate, transmit a report concerning such  
22 violation to the President and the Congress.

23 (1) If the Board shall determine that any violation of  
24 this Act has been committed or threatened by any officer  
25 of any of the Armed Forces of the United States, or any

1 person purporting to act under authority conferred by such  
2 officer, the Board shall (1) submit a report thereon to the  
3 President, the Congress, and the Secretary of the military  
4 department concerned, (2) endeavor to eliminate any un-  
5 lawful act or practice which constitutes such a violation by  
6 informal methods of conference, conciliation, and persuasion,  
7 and (3) refer its determination and the record in the case  
8 to any person authorized to convene general courts-martial  
9 under section 822 (article 22) of title 10, United States  
10 Code. Thereupon such person shall take immediate steps  
11 to dispose of the matter under chapter 47 of title 10, United  
12 States Code (Uniform Code of Military Justice).

13 (m) Any party aggrieved by any final determination  
14 or order of the Board may institute, in the district court of  
15 the United States for the judicial district wherein the viola-  
16 tion or threatened violation of this Act occurred, or in the  
17 United States District Court for the District of Columbia,  
18 a civil action for the review of such determination or order.  
19 In any such action, the court shall have jurisdiction to (1)  
20 affirm, modify, or set aside any determination or order made  
21 by the Board which is under review, or (2) require the  
22 Board to make any determination or order which it is author-  
23 ized to make under subsection (k), but which it has refused  
24 to make. The reviewing court shall set aside any finding,  
25 conclusion, determination, or order of the Board as to which

1 complaint is made which is unsupported by substantial evi-  
2 dence on the record considered as a whole.

3 (n) The Board shall submit, not later than March 31  
4 of each year, to the Senate and House of Representatives,  
5 respectively, a report on its activities under this section dur-  
6 ing the immediately preceding calendar year, including a  
7 statement concerning the nature of all complaints filed with  
8 it, its determinations and orders resulting from hearings  
9 thereon, and the names of all officers or employees of the  
10 United States with respect to whom any penalties have been  
11 imposed under this section.

12 (o) There are authorized to be appropriated sums nec-  
13 essary, not in excess of \$100,000, to carry out the provisions  
14 of this section.

15 SEC. 6. Nothing contained in this Act shall be construed  
16 to prohibit an officer of the Central Intelligence Agency or  
17 of the National Security Agency from requesting any civilian  
18 employee or applicant to take a polygraph test, or to take a  
19 psychological test, designed to elicit from him information  
20 concerning his personal relationship with any person con-  
21 nected with him by blood or marriage, or concerning his  
22 religious beliefs or practices, or concerning his attitude or  
23 conduct with respect to sexual matters, or to provide a per-  
24 sonal financial statement, if the Director of the Central

1 Intelligence Agency or his designee or the Director of the  
2 National Security Agency or his designee makes a personal  
3 finding with regard to each individual to be so tested or  
4 examined that such test or information is required to protect  
5 the national security.

6 SEC. 7. No civilian employee of the United States serving  
7 in the Central Intelligence Agency or the National Security  
8 Agency, and no individual or organization acting in behalf  
9 of such employee, shall be permitted to invoke the provisions  
10 of sections 4 and 5 without first submitting a written com-  
11 plaint to the agency concerned about the threatened or actual  
12 violation of this Act and affording such agency one hundred  
13 and twenty days from the date of such complaint to prevent  
14 the threatened violation or to redress the actual violation:  
15 *Provided, however,* That nothing in this Act shall be con-  
16 strued to affect any existing authority of the Director of Cen-  
17 tral Intelligence under section 403 (c), of title 50, United  
18 States Code, and any authorities available to the National  
19 Security Agency under section 833 of title 50, United States  
20 Code, to terminate the employment of any employee.

21 SEC. 8. Nothing in this Act shall be construed to affect  
22 in any way the authority of the Directors of the Central  
23 Intelligence Agency or the National Security Agency to pro-  
24 tect or withhold information pursuant to statute or executive

1 order. The personal certification by the Director of the  
2 agency that disclosure of any information is inconsistent with  
3 the provision of any statute or Executive order shall be con-  
4 clusive and no such information shall be admissible in evi-  
5 dence in any interrogation under section 1 (k) or in any  
6 civil action under section 4 or in any proceeding or civil  
7 action under section 5.

8 SEC. 9. This Act shall not be applicable to the Federal  
9 Bureau of Investigation.

10 SEC. 10. Nothing contained in sections 4 and 5 shall  
11 be construed to prevent establishment of department and  
12 agency grievance procedures to enforce this Act, but the  
13 existence of such procedures shall not preclude any applicant  
14 or employee from pursuing the remedies established by this  
15 Act or any other remedies provided by law: *Provided,*  
16 *however,* That if under the procedures established, the em-  
17 ployee or applicant has obtained complete protection against  
18 threatened violations or complete redress for violations, such  
19 action may be pleaded in bar in the United States district  
20 court or in proceedings before the Board on Employee  
21 Rights: *And provided further,* That if an employee elects  
22 to seek a remedy under either section 4 or section 5, he  
23 waives his right to proceed by an independent action under  
24 the remaining section.

1        SEC. 11. If any provision of this Act or the application  
2        of any provision to any person or circumstance shall be held  
3        invalid, the remainder of this Act or the application of such  
4        provision to persons or circumstances other than those as to  
5        which it is held invalid, shall not be affected.

Passed the Senate December 8, 1971.

Attest: FRANCIS R. VALEO,  
*Secretary.*

92<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

**S. 1438**

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## **AN ACT**

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To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

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DECEMBER 9, 1971

Referred to the Committee on Post Office and Civil Service



**LEGISLATIVE COUNSEL  
FILE COPY**

92<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 11150

## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1971

Mr. HANLEY (for himself, Mr. BRASCO, Mr. UDALL, Mr. CHARLES H. WILSON, Mr. GALIFIANAKIS, Mr. MATSUNAGA, and Mr. MURPHY of New York) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

## A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 That (a) chapter 71 of title 5, United States Code, is  
4 amended by adding at the end thereof the following new  
5 subchapter III:

6 "SUBCHAPTER III—EMPLOYEE RIGHTS

7 "§ 7171. Policy

8 "It is the policy of the United States, as an employer,  
9 to assure that those officials of Executive agencies charged

I

1 with administrative or supervisory responsibility recognize  
2 and protect the personal and individual rights, entitlements,  
3 and benefits of employees of, and applicants for employment  
4 in, Executive agencies.

5 **“§ 7172. Definition**

6 “For the purpose of this subchapter, ‘official of an  
7 Executive agency’ means—

8 “(1) an officer of an Executive agency;

9 “(2) an ‘officer’ of any of the ‘uniformed services’  
10 as such terms are defined under section 101 of title  
11 37; and

12 “(3) an individual acting or purporting to act  
13 under the authority of an officer referred to in para-  
14 graph (1) or (2) of this section.

15 **“§ 7173. Employee rights**

16 “(a) An official of an Executive agency may not—

17 “(1) require or request, or attempt to require  
18 or request, an employee of an Executive agency or an  
19 applicant for employment in an Executive agency to  
20 disclose his race, religion, or national origin, or the race,  
21 religion, or national origin of any of his forebears. This  
22 paragraph does not prohibit inquiry concerning—

23 “(A) the citizenship of an employee or appli-  
24 cant;

25 “(B) the national origin of an employee or

1 applicant when that inquiry is considered necessary  
2 or advisable to determine suitability for assign-  
3 ment to activities or undertakings related to the  
4 national security of the United States or to law  
5 enforcement or to activities or undertakings of any  
6 nature outside the United States;

7 “(C) the race, religion, or national origin of an  
8 employee or applicant when that matter is in issue  
9 in an allegation or complaint of discrimination; or

10 “(D) the race, religion, or national origin of an  
11 employee or applicant when (i) that matter is di-  
12 rectly related to or an integral part of scientific re-  
13 search or program evaluation, (ii) appropriate safe-  
14 guards have been instituted to preserve both the  
15 voluntary participation and the anonymity of the  
16 employee or applicant, and (iii) the inquiry has  
17 been approved by the Civil Service Commission.

18 This paragraph does not prohibit an inquiry made to  
19 satisfy the requirements of law providing preference for  
20 Indians in connection with functions or services affect-  
21 ing Indians;

22 “(2) coerce, require, or request, or attempt to  
23 coerce, require, or request, an employee of an Executive  
24 agency to attend or participate in a formal or informal  
25 meeting, assemblage, or other group activity held to

4

1 present, advocate, develop, explain, or otherwise cover  
2 in any way, by lecture, discussion, discourse, instruction,  
3 visual presentation, or otherwise, any matter or subject  
4 other than—

5 “(A) the performance of official duties to  
6 which that employee is or may be assigned in the  
7 Executive agency; or

8 “(B) the development of skills, knowledge, or  
9 abilities that qualify him for the performance of  
10 those official duties;

11 “(3) coerce, require, or request, or attempt to  
12 coerce, require, or request, an employee of an Executive  
13 agency to—

14 “(A) participate in any way in an activity or  
15 undertaking unless it is related to the performance  
16 of official duties to which the employee is or may  
17 be assigned in the Executive agency or related to  
18 the development of skills, knowledge, or abilities  
19 that qualify him for the performance of those official  
20 duties; or

21 “(B) make any report concerning any activity  
22 or undertaking of the employee not involving his  
23 official duties, except—

24 “(i) when there is reason to believe that  
25 the activity or undertaking conflicts with, or

1           adversely affects the performance of, his official  
2           duties; or

3           “(ii) as authorized to the contrary under  
4           paragraph (6) of this subsection.

5       This paragraph does not prohibit the use of appropriate  
6       publicity to inform employees of requests for assistance  
7       from public service programs or organizations;

8           “(4) require or request, or attempt to require or  
9       request, an employee of an Executive agency or an ap-  
10      plicant for employment in an Executive agency to submit  
11      to an interrogation or examination or to take a polygraph  
12      or psychological test designed to elicit from the employee  
13      or applicant information concerning his personal relation-  
14      ship with any individual related to him by blood or mar-  
15      riage, his religious beliefs or practices, or his attitude or  
16      conduct with respect to sexual matters. This paragraph  
17      does not prohibit—

18           “(A) a physician from eliciting this informa-  
19      tion or authorizing these tests in the diagnosis or  
20      treatment of an employee or applicant in individual  
21      cases and not pursuant to general practice or regu-  
22      lation governing the examination of employees or  
23      applicants, when the physician considers the infor-  
24      mation necessary to enable him to determine

1           whether or not the employee or applicant is suffer-  
2           ing from mental illness;

3           “(B) an official of an Executive agency from  
4           advising an employee or applicant of a specific  
5           charge of sexual misconduct made against the em-  
6           ployee or applicant and giving him a full oppor-  
7           tunity to refute the charge; or

8           “(C) an official of an Executive agency from  
9           eliciting, from an employee or applicant, in individ-  
10          ual cases and not pursuant to general practice or  
11          regulation, information concerning the personal re-  
12          lationship of the employee or applicant with any  
13          individual related to him by blood or marriage, when  
14          that official considers the information necessary in  
15          the interest of national security;

16          “(5) coerce or require, or attempt to coerce or  
17          require, an employee of an Executive agency to invest  
18          his earnings in bonds or other obligations or securities  
19          issued by the United States or by an Executive agency,  
20          or to make donations to any institution or cause of any  
21          kind. This paragraph does not prohibit an official of an  
22          Executive agency from calling meetings and taking any  
23          action appropriate to inform an employee of the op-  
24          portunity—

25          “(A) voluntarily to invest his earnings in

1 bonds or other obligations or securities issued by  
2 the United States or by an Executive agency; or  
3 “(B) voluntarily to make donations to any  
4 institution or cause;

5 “(6) require or request, or attempt to require or  
6 request, an employee of an Executive agency (other  
7 than a Presidential appointee) to disclose his property or  
8 the property of any member of his family or household.

9 This paragraph does not prohibit—

10 “(A) the Department of the Treasury or any  
11 other Executive agency from requiring an employee  
12 to make such reports as may be necessary or appro-  
13 priate for the determination of his liability for taxes,  
14 tariffs, customs duties, or similar obligations to the  
15 United States; or

16 “(B) an official of an Executive agency from  
17 requiring an employee who participates (other than  
18 in a clerical capacity) in any determination with re-  
19 spect to—

20 “(i) a Government contract or grant;

21 “(ii) the regulation of non-Federal enter-  
22 prise;

23 “(iii) the tax or other liability of any per-  
24 son to the United States; or

8

1                   “(iv) a claim that requires expenditure of  
2                   money of the United States;  
3                   from disclosing specific items of the property of  
4                   that employee, or specific items of the property of  
5                   any member of his family or household, which  
6                   may tend to indicate a conflict of interest with re-  
7                   spect to the performance of any of the official duties  
8                   to which the employee is or may be assigned.

9                   As used in this paragraph, ‘property’ includes items  
10                  of property, income, and other assets, and the source  
11                  thereof, liabilities, and personal and domestic expendi-  
12                  tures;

13                  “(7) prohibit or restrict, or attempt to prohibit  
14                  or restrict, the exercise by an employee of an Executive  
15                  agency of the right of reasonable communication with  
16                  any official of his agency; or

17                  “(8) remove, suspend or furlough from duty with-  
18                  out pay, demote, reduce in rank, seniority, status, pay,  
19                  or performance or efficiency rating, deny promotion to,  
20                  relocate, reassign, discipline, or discriminate in regard  
21                  to any employment right, entitlement, or benefit or any  
22                  term or condition of employment of, an employee of an  
23                  Executive agency, or threaten to commit any of those  
24                  acts, by reason of—

25                  “(A) the refusal or failure of the employee



1 to submit to or comply with any requirement, re-  
2 quest, or action prohibited by this subsection; or  
3 “(B) the exercise by the employee of any  
4 right, entitlement, benefit, or other protection  
5 granted or secured by this section and section 7175  
6 of this title.

7 “(b) The provisions of subsection (a) of this section do  
8 not apply to—

9 “(1) the Central Intelligence Agency;

10 “(2) the National Security Agency;

11 “(3) the Federal Bureau of Investigation; or

12 “(4) any other Executive agency, or part thereof,  
13 as the President, in the interest of national security,  
14 may recommend to the Congress.

15 The exemption recommended by the President and trans-  
16 mitted to the Congress under paragraph (4) of this sub-  
17 section shall become effective at the end of the first period  
18 of 30 calendar days of continuous session of the Congress  
19 after the date on which the recommendation is transmitted  
20 unless, between the date of transmittal and the end of the  
21 30-day period, either the committee of the House of Repre-  
22 sentatives or the committee of the Senate to which the recom-  
23 mendation has been referred adopts a resolution which specifi-  
24 cally disapproves the exemption so recommended and trans-

1   mitted. The continuity of a session is broken only by an ad-  
2   jourment of the Congress sine die. The days on which  
3   either House is not in session because of an adjournment of  
4   more than 3 days to a day certain are excluded in the compu-  
5   tation of the 30-day period.

6       “(c) (1) An employee of, or an applicant for employ-  
7   ment in, an Executive agency who claims to be aggrieved by  
8   a violation or threatened violation of subsection (a) of this  
9   section is entitled to file a grievance with the agency con-  
10   cerned not later than 15 days after the date of the violation  
11   or threatened violation.

12       “(2) If—

13       “(A) the decision on the grievance by the Execu-  
14   tive agency is adverse to the employee or applicant; or

15       “(B) after 60 days from the date the grievance is  
16   filed the Executive agency has not issued a decision on  
17   the grievance;

18   the employee or applicant is entitled to file a complaint with  
19   the Board on Employee Rights not later than 15 days after  
20   the adverse decision or the expiration of the 60-day period,  
21   as the case may be.

22   **“§ 7174. Board on Employee Rights**

23       “(a) There is hereby established a Board on Employee  
24   Rights composed of three members appointed by the Presi-  
25   dent, by and with the advice and consent of the Senate, one

1 of whom shall be a representative of a labor organization,  
2 or association of supervisors, representing employees. Not  
3 more than two members of the Board may be adherents of the  
4 same political party and none of the members of the Board  
5 may hold another office or position in the Government of the  
6 United States. The President shall from time to time design-  
7 ate one of the members as chairman.

8 “(b) The term of office of each member of the Board  
9 is 6 years. A member appointed to fill a vacancy occurring  
10 before the end of the term of office of his predecessor serves  
11 for the remainder of that term. When the term of office of a  
12 member ends, he may continue to serve until his successor  
13 is appointed and has qualified. The President may remove  
14 a member only for inefficiency, neglect of duty, or mal-  
15 feasance in office.

16 “(c) Two members of the Board constitute a quorum  
17 for the transaction of business.

18 “(d) The Board may appoint and fix the pay of such  
19 officers, attorneys, and employees, and make such expendi-  
20 tures, as may be necessary to carry out its functions.

21 “(e) The Board shall prescribe rules and regulations  
22 necessary and proper to carry out its functions under this  
23 subchapter. To the extent consistent with efficient and eco-  
24 nomical administration and the attainment and achievement  
25 of justice in the consideration and disposition of matters be-

1 fore the Board, the rules and regulations shall provide for the  
2 use of depositions of witnesses. The rules and regulations  
3 shall also prescribe the maximum attorney's remuneration  
4 which may be awarded under section 7176 (c) of this title  
5 for services performed in connection with any matter before  
6 the Board, or the court, or both, under this subchapter. The  
7 Board may require, by subpoena or otherwise, the attendance  
8 and testimony of witnesses, and the production of such  
9 books, records, correspondence, memoranda, papers, and  
10 documents, as it considers necessary.

11 “(f) (1) The Board shall receive and investigate written  
12 complaints, filed under section 7173 (c) of this title, from  
13 or on behalf of an employee or applicant claiming to be  
14 aggrieved by a violation or threatened violation of section  
15 7173 (a) of this title. On receipt of such a complaint, the  
16 Board forthwith shall transmit a copy thereof to the head  
17 of the Executive agency concerned.

18 “(2) If the Board determines, within 10 days after  
19 its receipt of the complaint, that the facts alleged in the  
20 complaint do not constitute a violation or threatened viola-  
21 tion of section 7173 (a) of this title with respect to the  
22 employee or applicant, it may dismiss the complaint without  
23 a hearing. If the Board dismisses the complaint, it shall  
24 notify all interested parties of the dismissal.

1       “(3) If the Board does not dismiss the complaint with-  
2 in 10 days after its receipt thereof, it shall—

3           “(A) conduct a hearing on the complaint within  
4 30 days after its receipt of the complaint; and

5           “(B) furnish notice of the time, place, and nature  
6 of the hearing thereon to all interested parties.

7 If a hearing on the complaint is to be conducted—

8           “(i) the Executive agency concerned shall file an  
9 answer to the complaint and participate as a party in  
10 the hearing; and

11           “(ii) any official of that agency, who is alleged,  
12 in the complaint or during the course of the hearing,  
13 to have committed a violation or threatened viola-  
14 tion of section 7173 (a) of this title, is entitled, in his  
15 individual capacity, to file an answer to the allegation  
16 and participate as a party in the hearing.

17       “(4) The Board shall render its final decision with re-  
18 spect to any complaint within 30 days after the conclusion  
19 of its hearing thereon.

20       “(g) With the written consent of the employee or ap-  
21 plicant concerned, filed with the Board, an officer or repre-  
22 sentative of not more than one labor organization, or asso-  
23 ciation of supervisors, representing employees shall be given  
24 an opportunity to participate in each hearing conducted un-

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1 der this section, through submission of written data, views, or  
2 arguments, and, in the discretion of the Board, with oppor-  
3 tunity for oral presentation.

4 “(h) Insofar as consistent with the purposes of this sec-  
5 tion, the provisions of subchapter II of chapter 5 of this  
6 title apply to the rulemaking, hearing, and adjudication  
7 functions of the Board under this section.

8 “(i) If, after hearing, the Board determines that a vio-  
9 lation of section 7173 (a) of this title has not occurred or is  
10 not threatened, the Board shall state its determination and  
11 notify all interested parties of the determination. Each such  
12 determination, including a dismissal by the Board of the  
13 complaint without a hearing, constitutes a final decision of  
14 the Board for purposes of judicial review.

15 “(j) If, after hearing, the Board determines that a vio-  
16 lation of section 7173 (a) of this title has been committed  
17 or threatened by an official of an Executive agency not sub-  
18 ject to chapter 47 of title 10, the Board—

19 “(1) shall immediately issue and cause to be served  
20 on the official an order requiring him to cease and desist  
21 from the unlawful act or practice which constitutes a  
22 violation;

23 “(2) shall immediately endeavor to eliminate any  
24 such unlawful act or practice by informal methods of  
25 conference, conciliation, and persuasion; and

1           “(3) may, without regard to chapter 75 of this  
2 title—

3           “(A) (i) in the case of the first offense by  
4 such an official, other than any official appointed  
5 by the President, by and with the advice and con-  
6 sent of the Senate, issue an official reprimand against  
7 the official or order the suspension without pay of  
8 the official from the position or office held by him  
9 for a period of not to exceed 15 days; and

10           “(ii) in the case of a second or subsequent  
11 offense by such official, order the suspension with-  
12 out pay of the official from the position or office  
13 held by him for a period of not less than 15 nor  
14 more than 60 days or, when the Board considers  
15 such second or subsequent offense to be sufficiently  
16 serious to warrant such action, order the removal  
17 of the official from the position or office; and

18           “(B) in the case of any offense by such an  
19 official appointed by the President, by and with  
20 the advice and consent of the Senate, transmit a  
21 report concerning the violation to the President and  
22 the Congress.

23 A reprimand or order under subparagraph (3) (A) of this  
24 subsection shall not become effective until the expiration of  
25 the period within which the official aggrieved by the reprimand

1 mand or order may file a petition for review or complaint  
2 for trial de novo or, if such a petition or complaint is filed,  
3 until the court makes a final disposition of the case.

4 “(k) If, after hearing, the Board determines that a  
5 violation of section 7173(a) of this title has been com-  
6 mitted or threatened by an official of an Executive agency  
7 subject to chapter 47 of title 10, the Board shall—

8 “(1) submit a report thereon to the Secretary of  
9 the military department concerned;

10 “(2) endeavor to eliminate any unlawful act or  
11 practice which constitutes such a violation by informal  
12 methods of conference, conciliation, and persuasion; and

13 “(3) refer its determination and the record in the  
14 case to the Secretary concerned, as defined in section  
15 101 of title 10, who shall take immediate steps to dis-  
16 pose of the matter under chapter 47 of title 10.

17 However, the immediate steps referred to in paragraph (3)  
18 of this subsection shall not be taken by the Secretary con-  
19 cerned until the expiration of the period within which the  
20 official aggrieved by the reference to the Secretary by the  
21 Board under that paragraph may file a petition for review or  
22 complaint for trial de novo or, if such a petition or complaint  
23 is filed, until the court makes a final disposition of the case.

24 “(l) (1) The Board shall submit, not later than March  
25 31 of each year, to the President for transmittal to the Con-



1 gress a report on its activities under this subchapter during  
2 the immediately preceding calendar year, including—

3 “(A) the types and kinds of complaints filed with  
4 the Board;

5 “(B) the determinations, orders, and actions of the  
6 Board with respect to those complaints;

7 “(C) the name of each official of an Executive  
8 agency with respect to whom any action was taken or  
9 penalty imposed under subsection (j) of this section;

10 “(D) the nature of that action or penalty; and

11 “(E) such other matters as the Board considers  
12 relevant and appropriate to provide full and complete  
13 information with respect to the operation and administra-  
14 tion of this subchapter.

15 “(2) The Secretary of each military department shall  
16 submit, not later than March 31 of each year, to the Presi-  
17 dent for transmittal to the Congress, a report on his activities  
18 under this subchapter during the immediately preceding  
19 calendar year, including—

20 “(A) the disposition, under chapter 47 of title 10,  
21 of matters referred to the Secretary under paragraph  
22 (3) of subsection (k) of this section;

23 “(B) the name of each official of an Executive  
24 agency with respect to whom any action was taken or  
25 penalty imposed under such chapter;

1           “(C) the nature of that action or penalty; and

2           “(D) such other matters as the Secretary con-  
3       siders relevant and appropriate to provide full and com-  
4       plete information with respect to his activities under  
5       this subchapter.

6   **“§ 7175. Judicial review**

7       “(a) An employee, or applicant for employment, ag-  
8       grieved by a final determination or order of the Board on  
9       Employee Rights may file, within 30 days after the date  
10      of that determination or order, in the district court of the  
11      United States for the judicial district in which the alleged  
12      violation or threatened violation of section 7173 (a) of this  
13      title occurred or in which his official duty station was located  
14      at the time of the alleged violation or threatened violation—

15           “(1) a petition for a review of the determination or  
16      order; or

17           “(2) a complaint for a trial de novo on the viola-  
18      tion or threatened violation of section 7173 (a) of this  
19      title, which was the subject of the determination or order  
20      of the Board.

21      The petition or complaint shall name as defendant both the  
22      Executive agency concerned and the Board on Employee  
23      Rights. An official, or former official, of an Executive  
24      agency—

25           “(A) with respect to whom, in connection with the

1 petition for review, there is involved an alleged viola-  
2 tion or threatened violation by him of section 7173 (a)  
3 of this title;

4 “(B) with respect to whom the complaint for a  
5 trial de novo, or the trial pursuant to the complaint, in-  
6 volves an alleged violation or threatened violation by  
7 him of section 7173 (a) of this title; or

8 “(C) aggrieved by a final determination or order  
9 of the Board, or part or application thereof, in connec-  
10 tion with such alleged violation or threatened violation;  
11 is entitled, in his individual capacity, to file an answer with  
12 respect to such violation or threatened violation and partici-  
13 pate as a party in the proceedings.

14 “(b) If, after the expiration of 30 days after the date  
15 of a final determination or order of the Board, a petition or  
16 complaint with respect to such determination or order has  
17 not been filed under subsection (a) of this section, an official  
18 or former official of an Executive agency aggrieved by that  
19 determination or order, or part or application thereof, may  
20 file, within 30 days after the expiration of such 30-day  
21 period, in the district court of the United States for the judi-  
22 cial district in which the alleged violation or threatened vio-  
23 lation of section 7173 (a) of this title occurred or in which  
24 his official duty station was located at the time of the alleged

1 violation or threatened violation, a petition for review of  
2 the determination or order, or part or application thereof.

3 “(c) A petition for review or complaint for trial de  
4 novo filed under subsection (a) or (b) of this section shall  
5 name as defendant both the Executive agency concerned and  
6 the Board, and a copy thereof shall be served on the Execu-  
7 tive agency concerned and the Board.

8 “(d) When a copy of a petition for review is served on  
9 the Board, a certified copy of the record on which the final  
10 determination or order of the Board is based shall be filed  
11 with the court. On filing of a petition with the court, and  
12 in its consideration of the petition the court shall have  
13 jurisdiction to—

14 “(1) issue such restraining order, interlocutory  
15 injunction, permanent injunction, or mandatory injunc-  
16 tion, as may be necessary and appropriate with respect  
17 to any determination or order, or part or application  
18 thereof, made by the Board which is under review;

19 “(2) affirm, modify, or set aside any such deter-  
20 mination or order, or part or application thereof;

21 “(3) require the Board to make any determination  
22 or order which it is authorized to make under section  
23 7174 (j) of this title, but which it has failed or refused  
24 to make; and

25 “(4) remand the matter to the Board for appropri-

1     ate action by the Board and the Executive agency  
2     concerned in accordance with the decision of the court.  
3     The reviewing court shall set aside any finding, conclusion,  
4     determination, or order of the Board as to which a com-  
5     plaint is made that is unsupported by substantial evidence  
6     on the record considered as a whole.

7     “(e) On the filing of a complaint for a trial de novo,  
8     the court shall have jurisdiction to—

9         “(1) try and determine the action, irrespective of  
10     the existence or amount of pecuniary injury done or  
11     threatened; and

12         “(2) issue such restraining order, interlocutory in-  
13     junction, permanent injunction, or mandatory injunction,  
14     or enter such other judgment or decree, as may be neces-  
15     sary or appropriate to prevent the threatened violation  
16     or to afford the plaintiff and others similarly situated  
17     complete relief against the consequences of any violation.

18     The court shall decide all questions of law in any action  
19     under this subsection. The court, upon application by either  
20     party, shall order a trial by jury of the issues in any action  
21     under this subsection.

22     “(f) With the written consent, filed with the court, of  
23     an employee, applicant for employment, official of an Execu-  
24     tive agency, or former official of an Executive agency ag-  
25     grieved by a final determination or order of the Board, who

1 is entitled to file a petition for review, a complaint for a  
2 trial de novo, or answer, or to participate as a party in any  
3 proceeding, under this section, not more than one labor  
4 organization, or association of supervisors, representing em-  
5 ployees may intervene in connection with the review or the  
6 trial de novo.

7 **“§ 7176. General provisions**

8 “(a) An individual called on to participate in any phase  
9 of an administrative or judicial proceeding under this sub-  
10 chapter shall be free from restraint, coercion, interference,  
11 intimidation, or reprisal in the course of, or because of, his  
12 participation.

13 “(b) An employee or an official of an Executive agency  
14 who is a party to the action, summoned, or assigned by  
15 his agency to appear, including an appearance to give his  
16 deposition, before the Board on Employee Rights, or before  
17 the appropriate court, in connection with any matter before  
18 the Board or the court under this subchapter, shall not incur  
19 a loss of or reduction in any right, entitlement, or benefit as  
20 an employee or official of that agency. A period of such  
21 absence within his regularly scheduled tour of duty is service  
22 performed by the employee or official while on official busi-  
23 ness. Travel by the employee or official during a period of  
24 such absence, whether or not performed within his regularly  
25 scheduled tour of duty, is travel on official business.

1       “(c) On written application certifying his expenses and  
2 charges filed with the Board on Employee Rights by an  
3 attorney representing a party to the action who has appeared  
4 before the Board, or the appropriate court, in connection  
5 with any matter before the Board, or the court, or both, un-  
6 der this subchapter, which has been determined by the Board  
7 or the court, in favor of the party represented by the at-  
8 torney, the Board may allow, at the conclusion of the rep-  
9 resentation and in accordance with the regulations prescribed  
10 under section 7174 (c) of this title, such remuneration to the  
11 attorney as it considers reasonable and proper and shall cer-  
12 tify to the Executive agency concerned the amount of the  
13 attorney's remuneration granted by it. The agency shall pay  
14 the certified amount of such remuneration, in accordance  
15 with the following provisions:

16           “(1) the agency shall charge against such certi-  
17 fied amount of remuneration all sums previously paid  
18 to the attorney by the party represented;

19           “(2) if the sums previously paid to the attorney  
20 by that party for such representation equal or exceed  
21 the certified amount of the attorney's remuneration, the  
22 agency shall reimburse that party in that certified  
23 amount; and

24           “(3) if the sums previously paid to the attorney  
25 by that party for such representation are less than that

1       certified amount, the agency shall reimburse that party  
2       in the amount paid by that party and shall pay to the  
3       attorney an amount equal to the difference between the  
4       certified amount of the attorney's remuneration and the  
5       aggregate of the sums previously paid by that party to  
6       the attorney."

7       (b) The analysis of chapter 71 of title 5, United States  
8       Code, is amended by adding the following at the end thereof:

"SUBCHAPTER III—EMPLOYEE RIGHTS

"Sec.

"7171. Policy.

"7172. Definition.

"7173. Employee rights.

"7174. Board on Employee Rights.

"7175. Judicial review.

"7176. General provisions."

9       (c) Section 5316 of title 5, United States Code, is  
10       amended by adding at the end thereof:

11               "(131) Members of the Board on Employee  
12       Rights (3)."

13       SEC. 2. Subchapter III of chapter 71 of title 5, United  
14       States Code, as added by this Act, shall apply only with re-  
15       spect to acts, violations, threatened violations, grievances,  
16       and other similar matters covered by such subchapter which  
17       arise or occur on or after such date following the date of  
18       enactment of this Act as the Board on Employee Rights,  
19       established by the amendments made by the first section  
20       of this Act, shall prescribe but in no event later than the



1 one hundred and eightieth day following such date of enact-  
2 ment.

3 SEC. 3. Notwithstanding section 7174 of title 5, United  
4 States Code, as added by the first section of this Act, the  
5 terms of office of the three members first appointed to the  
6 Board on Employee Rights shall end, as designated by the  
7 President, one at the end of 2 years, one at the end of 4  
8 years, and one at the end of 6 years.

82<sup>d</sup> CONGRESS  
1<sup>st</sup> Session

# H. R. 11150

## A BILL

To amend title 5, United States Code, to protect civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights, to prevent unwarranted governmental invasions of their privacy, and for other purposes.

By Mr. HANLEY, Mr. BRASCO, Mr. UDALL, Mr. CHARLES H. WILSON, Mr. GALFIANAKIS, Mr. MATSUNAGA, and Mr. MURPHY of New York

OCTOBER 7, 1971

Referred to the Committee on Post Office and Civil Service